MOHD TAHIR MOHD SHERIFF

v.

RAMLAH ABDULLAH

COURT OF APPEAL, KUALA LUMPUR
ABDUL KADIR SULAIMAN JCA
MOHD GHAZALI YUSOFF JCA
WAN ADNAN MUHAMAD J
[CIVIL APPEAL NO: K-02-836-99]
11 FEBRUARY 2004

CIVIL PROCEDURE: *Appeal - Appeal to Court of Appeal - Non-appealable matters - Amount or value of subject-matter of claim less than RM250,000 - Leave to appeal - Whether must be obtained - Whether appeal brought without leave was incompetent - Whether should be struck out - Courts of Judicature Act 1964, s. 68(1)(a)*

This was an appeal by the plaintiff/purchaser from the decision of the High Court dismissing his action against the defendant/vendor for specific performance of an agreement for the sale of a parcel of land belonging to the defendant. At the commencement of the hearing, however, counsel for the defendant raised a preliminary objection as to the competency of the appeal. It was submitted that as the value of the subject-matter of the plaintiff's claim was less than RM250,000, the leave of the Court of Appeal would be required before the plaintiff could proceed with his appeal.

Held (striking out the appeal)
Per Abdul Kadir Sulaiman JCA delivering the judgment of the court

[1] The amount or value of the subject-matter of the plaintiff's action, *ie*, the purchase price of the land, was only RM120,000. Consequently, the leave of the Court of Appeal would be required before an appeal could properly be brought before it. The words of s. 68(1)(a) of the Courts of Judicature Act 1964 are clear and unambiguous. The was no reason why the plaintiff's instant appeal should be exempted from the operation of the said section. (p 867 e-g)

[Preliminary objection upheld; appeal struck out for want of leave.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Ini adalah rayuan oleh plaintif/pembeli terhadap keputusan Mahkamah Tinggi yang menolak tuntutannya terhadap defendan/penjual bagi mendapatkan pelaksanaan spesifik satu perjanjian mengenai penjualan sebidang tanah yang dimiliki oleh defendan. Bagaimanapun, di permulaan pendengaran, peguamcara defendan telah membangkitkan bantahan awal tentang kekompetenan rayuan. Dihujahkan bahawa, oleh kerana nilai halperkara tuntutan plaintif kurang dari RM250,000 kebenaran Mahkamah Rayuan hendaklah terlebih dahulu diperolehi sebelum plaintif boleh meneruskan dengan rayuannya.

Diputuskan (menolak rayuan)
Oleh Abdul Kadir Sulaiman HMR menyampaikan penghakiman mahkamah

[1] Jumlah atau nilai halperkara tuntutan plaintif, yakni harga belian tanah, hanyalah RM120,000. Oleh yang demikian, kebenaran Mahkamah Rayuan perlulah terlebih dahulu diperolehi sebelum rayuan boleh dibawa di hadapannya. Perkataan-perkataan s. 68(1)(a) Akta Mahkamah Kehakiman 1964 adalah jelas. Tidak ada sebab mengapa rayuan perayu di sini harus dikecualikan dari kesan seksyen tersebut.

Bantahan awal dibenarkan; rayuan ditolak kerana ketiadaan izin.]

Legislation referred to:
Courts of Judicature Act 1964, s. 68(1)(a)

For the appellant - G Ravishankar; M/s R Shankar Gandhi & Assocs
For the respondent - Victor Paul; M/s Abdul Halim Said & Co

[Appeal from High Court, Alor Setar; Suit No: 22-03-1997]

Reported by Gan Peng Chiang

JUDGMENT

Abdul Kadir Sulaiman JCA:
In the court below the appellant as plaintiff filed an action against the respondent for the specific performance of an agreement made between them for the sale of a parcel of land of which the respondent is the registered owner. For the respondent, she was at the same time interested in owning a terrace house. So the agreement provides for a purchase price of the land to be RM120,000. Upon the signing of the agreement, the appellant paid RM21,680 being the first payment leaving a balance of RM98,320 to be paid. As to this balance, the agreement provides for the payment in kind in the form of the transfer of a single storey terrace house worth RM54,960 without stipulating

when the transfer should take effect. As to the remaining sum of RM43,360 it is to be paid in two equal instalments of RM21,680 each, the first was to be paid by the appellant to the respondent within three months of the transfer of the terrace house and the final payment was payable within three months after the date of the last payment.

Having paid the first payment mentioned earlier, the appellant did not transfer the terrace house as agreed to the respondent nor were the remaining two payments made.

Dispute between the parties soon developed resulting in the filing of the present action in the High Court by the appellant. The learned judge heard the suit and on 6 October 1999 dismissed the appellant's claim with costs and made a further order for the respondent to refund to the appellant, the sum of RM21,680 paid on the signing of the agreement within 30 days. Dissatisfied with the decision, the appellant filed an appeal on 16 October 1999. No leave was obtained to file this appeal.

On 4 November 1999 the appellant by Civil Application No. K-08-281-99 applied to the Court of Appeal for leave to do so. The court on 6 June 2001 dismissed the said application with costs. Hence, it remained as an appeal brought by the appellant without leave of the court.

Somehow this appeal came up before us for disposal on 30 September 2003. At the commencement of the proceeding, the learned counsel for the respondent raised a preliminary objection as to the competency of this appeal pursuant to s. 68(1)(a) of the Courts of Judicature Act 1964 which is to the effect that no appeal shall be brought to the Court of Appeal when the amount or value of the subject-matter of the claim (exclusive of interest) is less than RM250,000, except with the leave of the Court of Appeal. In reply, the learned counsel for the appellant merely submitted to us that the decision made by the learned judge of which this appeal is all about, was made after a full trial and it was a claim for specific performance of the contract. No authority was provided to us as to why this matter should be outside the purview of s. 68(1)(a) of the Act and more so in the light of the dismissal of the application for leave by the Court of Appeal on 6 June 2001 mentioned earlier. The said provisions of the Act is clear and unambiguous. In this case, the subject-matter is land which according to the agreement was worth RM120,000 a figure which is less that RM250,000 provided by the section.

So, at the end of it we are left with no alternative but to uphold the preliminary objection raised by the learned counsel for the respondent as to the competency of this appeal. We accordingly on 30 September 2003 made an order striking out the appeal for want of leave. We also made an order that the deposit of this appeal be given to the respondent as costs.